FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.2667 OF 1998

Sharnappa Sangappa
Paramshetti & Anr. .....Petitioners.

V/s

1. Digamber Dattatraya Menkudale
Since deceased through his legal
heirs & representatives :-
1(a) Radhabai Murlidhar Menkudale
and Ors. .....Respondents.

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrars orders.	Court's or Judge's orders.

None for the Petitioners.

None for the Respondents.

CORAM: V.M. KANADE, J.
DATE : 7th March, 2007

P.C.:

1. None appears for the Petitioners and the Respondents.

2. The Petitioners are original defendants in a suit which was filed by the Respondents for recovery of possession of suit property under

the provisions of Transfer of Property Act on various grounds. The Trial Court was pleased to pass a decree of eviction against the Petitioners. Against the said judgment and decree, present Petitioners preferred an appeal being Civil Appeal No. 490 of 1990 in District Court at Solapur. During the pendency of the appeal, Respondent No.2 sold his 1/2 undivided share in the suit property to Petitioner No.2 by a registered sale deed, which was registered at Akkalkot on 14/08/1997. In view of the subsequent development, the Petitioners preferred an application in the lower Appellate Court under Order XLI Rule 33 for leading additional evidence. However, this application was rejected by the lower Appellate Court and, therefore, the present Petition has been filed. The lower Appellate Court held that though the undivided share of the suit property which belonged to Respondent No.2 was sold to the appellant, that

would not affect the nature of the suit and, on that ground, dismissed the said application.

3. I have perused the judgment and order passed by the District Judge Solapur dated 10/3/1998. In my view, in the interest of justice, the lower Appellate Court ought to have permitted the appellant to lead additional evidence and should have allowed the application filed by the present Petitioners and after the evidence was adduced should have then recorded the finding.

4. In the result, impugned order is set aside. Rule is made absolute in terms of prayer clause (b).

5. Petition is accordingly disposed of.

(V. M. KANADE, J.)